IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.410 OF 2005
IN
CHAMBER SUMMONS NO.829 OF 2002
IN
EXECUTION APPLICATION (LOD.)NO.192 OF 2002
IN
AWARD DATED 26.1.2000

Mr.Mahendra Jayantilal Vora & Ors. ..Applicants.

V/s.

M/s Renuka Builders & Developers
Pvt.Ltd. & ors. ..REspondents.

Mr.Gaurang Mehta for applicants.

Mr.M.D.Sicodia i/b D.S.Retiwala for respondent No.1.

Mr.P.G.Lad for respondent No.2 and 3.

CORAM: A.M.KHANWILKAR,J

DATE : AUGUST 10, 2005.

P.C. :

1. Heard counsel for the parties.

2. This chamber summons seeks to amend the chamber summons No.829 of 2002 in terms of the schedule to the present chamber summons. This chamber summons is taken out by the applicants on the assertion that the subsequent developments have necessitated amendment of the chamber summons No.829 of 2002.

3. This chamber summons is opposed by the counsel appearing for respondent No.1 to 3. According to him, there is no legal provision permitting amendment of chamber summons. In as much as, expression "pleading" has been defined under order VI rule 1 of the C.P.code as "plaint" or "written statement" only. Even if, this submission was to be accepted, however, that does not take away the inherent powers of this court to permit amendment of application which is filed in pending proceedings before it. Such powers can be exercised under section 151 of the C.P.Code, in addition to other enabling provisions in the Code and Bombay High Court Rules. Besides, I find substance in the argument canvassed on behalf of the applicants, which is supported by the decision reported in **AIR 1988 KERALA 32, in the case of Ravindran & Anr. V/s. Dandayudhan & Ors.** If amendment of execution petition is permissible and can be allowed, nothing precludes this court from permitting amendment of the chamber summons which is taken out in such execution petition.

4. Be that as it may, in my opinion, the proposed amendment are quite substantial and instead

of taking recourse to the amendment of chamber summons No.829 of 2002, the appropriate course, in the interest of justice, is to permit the applicants to withdraw this Chamber summons no.829 of 2002, with liberty to file fresh chamber summons for the reliefs, now claimed which is proposed amendment referred to in schedule to the chamber summons or such reliefs as may be advised. All the questions in relation thereto will be considered on its own merit.

5. Accordingly, this chamber summons is disposed of with liberty to the applicants to withdraw chamber summons No.829 of 2002, to enable them to file fresh chamber summons, for reliefs as may be permissible in law.

6. It is brought to my notice that some interim order has been passed in the previous chamber summons No.829 of 2002. Those orders will continue to operate for a period of six weeks from today, to enable the applicants to file fresh chamber summons, if so advised.